

Mayor
Alice Ruby

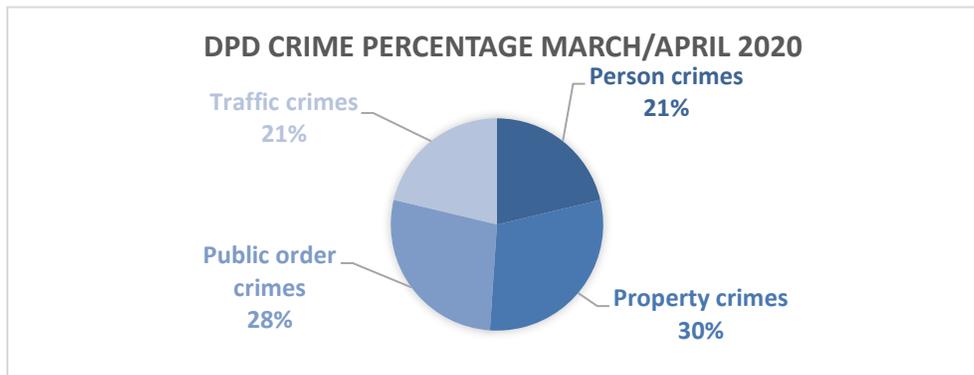
Manager
Tod Larson



Dillingham City Council
Chris Napoli
Bill Rodawalt
Kaleb Westfall
Curt Armstrong
Andy Anderson
Gregg Marxmiller

MEMORANDUM

Date: 4-28-2020
To: City Manager Tod Larson
From: Chief Daniel Pasquariello
Subject: Public Safety report MAY 2020



In response to the corona virus pandemic we are practicing social distancing, hand washing, and other CDC recommended virus prevention guidelines. We have inventoried all of our PPE and continue the difficult process of ordering further supplies. We are utilizing our PPE inventory as if re-supply will not occur and are rationing accordingly so that we will have PPE available when the virus peaks. We have stocked up on cleaning supplies and hand sanitizer and employees are doing an excellent job of keeping their work areas clean. We take the temperature of all employees when they report for duty. Numerous individuals have donated cloth facemasks to the police department.

Our lobby is open to the public from 7:00 am until 9:00 pm. We lock up the lobby from 9:00 pm until 7:00 am. A buzzer has been installed outside the doors so that persons can alert us of their presence when the lobby is closed. Homeless persons are no longer allowed to sleep in lobby.

We initiated COVID-19 screening procedures for all calls. Dispatchers ask questions to try and ascertain if there are possible corona effected persons present and relay the information to the responding police or EMS personnel.

We have initiated COVID-19 screening questions for all bookings. We take the temperature of all persons being booked into our facility. Correction officers wear N95 facemasks when dealing with inmates inside of jail. State DOC sent us large amount of cloth facemasks to issue to jail inmates.

In an effort to keep the population of the jail down we no longer accept persons turning themselves in to serve time. Most persons charged with misdemeanor crimes are released on their own recognizance when sober, per the new statewide bail schedule issued by the court system. When AST arrests a person in a village they are arraigning them there rather than transporting them to our facility.

Our dispatch division is once again fully staffed. Our corrections division is once again fully staffed.

Our patrol officers wear N95 masks when responding to calls for service. For a month-long time period the patrol division was fully staffed, a total of 8 sworn officers. Then, our recruit officer left the police academy and now works as a dispatcher. Our patrol sergeant's employment was terminated. We now have only 6 sworn officers (75% staffing) to police the influx of commercial fisherman, and fight the corona virus pandemic.

Our DMV office has been closed all month due to the corona virus pandemic. While inconvenient for the public, it has been beneficial to the department since it allowed our DMV agent to concentrate on obtaining supplies and perform other important administrative tasks during these difficult and uncertain times. Materials have been ordered and as soon as they arrive we will build a Plexiglas window at the DMV counter. We will then re-open to take care our local residents' DMV needs prior to the summer influx of out-of-town fisherman. At first, service will be by appointment only to minimize congregations of people in our lobby. We will then see how it goes from there.

The Dillingham Court and AST have been trying to get our corrections division to perform video arraignments in order to alleviate troopers transporting prisoners from the jail to the court house, and free up the troopers every morning. We were able to negotiate a special services contract where AST will provide us with the video conferencing equipment/maintenance at no cost; provide us with free access to the State ARMS records management system (*a \$6,400 value*); and a payment of \$20,000 per year.

Crime has stayed relatively the same between the month of March, and the stay-at-home month of April. April did see a major increase in DUI offenses. Title 47 Protective Custodies went way down. This may be a combination of warmer weather, and the closing of our lobby which made inebriated persons less likely to congregate near, and

Gravitate to our building. The drop in misdemeanor arrests is due to the fact that, in an effort to decrease the population of our jail we have begun issuing citations in-lieu of arrest for misdemeanor offenses. Of the 17 citations issued in April, nine of those were for misdemeanor offenses where, in normal times we would have made a physical arrest.

No photographs of pets this month.

Dillingham Police Activity 2020	Jan	Feb	March	April	May	June	July	August	Sept	October	Nov	Dec	Division
Total Calls Dispatched	244	319	229	216									Dispatch
Dispatched to DPD	185	229	174	166									
Dispatched to Animal Control	15	26	14	24									
Dispatched to Fire/EMS	15	19	23	17									
Dispatched to AST	29	44	18	9									
Calls handled by DPD patrol	185	229	174	166									Patrol
Arrests by DPD (felony)	2	2	4	1									
Arrests by DPD (misdemeanor)	14	7	10	6									
T-47s by DPD	8	6	22	4									
Citations issued by DPD	26	6	9	17									
Incident reports by DPD	25	18	26	21									
Inmates held at jail	32	41	26	13									Corrections
Title 47s held at jail	8	6	22	4									
Animal impounds	7	8	6	5									Animal Control
Animals surrendered to shelter	*	*	*	*									
Animals returned to owners	6	7	6	5									
Animals adopted out	*	*	*	*									
Animals sent to other rescue groups	*	*	10	1									
Rabies/parvo shots	5	54	14	14									
Euthanasias	2	2	1	2									
Citations issued	*	2	*	*									
Driver's license/IDs issued	170	142	76	*									DMV
Titles/registrations	44	43	26	*									
Boat registrations	*	1	2	*									
CDLs	2	2	4	*									
Road tests	4	2	1	*									
Written tests	9	18	10	*									

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MEMORANDUM

Date: April 28, 2020
To: Tod Larson, City Manager
From: Jean Barrett, Port Director
Subject: Monthly Staff Report

I feel I speak for most everyone when I say that this has been the strangest month that we have ever experienced! I say Dillingham as a whole has stepped up big time in during this crisis, our leaders have mapped out plans and we are all working on making them happen. Kudos to all who are working to keep our town, region, family and friends safe during this time.

Dock

- Things have started to rumble at the Dock, Dean and Ben started work at the beginning of the month and have been working hard to get everything ready for the season. I believe we will still have a very busy and productive year despite the issues we are dealing with.
- All of the ice on the dock has melted and we have put a blade to the entire area when it was a little wet and now as it dries we have a smooth hard surface.
- Maintenance on the forklifts and crane that was scheduled for this spring didn't happen because of the travel ban and quarantine, the City mechanics are working hard to help us get things greased, lubed and oiled prior to the first barges.
- We still haven't received an application that I felt warranted an interview for the open operator position, as much as I would like to have someone working I cannot feel good about putting a warm body in a job that requires handling of big equipment, the right person will come along eventually.
- We have made plans on how to continue to serve the public without compromising our workers and the customers,
 - We have ordered plexiglass to be installed on the counter with a pass through cutout to act as an additional barrier along with a barrier gate to allow for a 6 foot distance between employees and customers.
 - All of our workers will wear masks when working around customers.

- We will abide by social distance regulations and keep all contact to a minimum, along with disinfecting as needed.

Harbor

Things at the harbor have just begun to start ramping up, the ice is mostly out and there has been an upswing of traffic in and out. Measures have been put in place to allow business as usual

- We have made plans on how we are going to continue to serve the public without compromising our workers and the customers,
 - We have ordered plexiglass to be installed on the counter with a pass through cutout to act as an additional barrier along with a barrier gate to allow for a 6 foot distance between employees and customers.
 - All of our workers will wear masks when working around customers.
 - We will abide by social distance regulations and keep all contact to a minimum, along with disinfecting as needed.

One thing I have been working over in my mind is how are we going to regulate social distancing per city regulation with all of the boats in the harbor? Some ideas are:

- Install just the South ramps this summer and only allow vessels to access them when it is an emergency or when maintenance is needed. NOT installing the middle or East ramp will at first cause a bit of an uproar I am sure but for the safety of all involved we need to keep the melting pot that is the harbor during the season.
- I spoke with our janitorial service for the bathhouse and we agree that a single cleaning per day is insufficient, we are going to discuss this more but we are looking at disinfecting 3-4 times per day.
- I am planning to limit the hours of the showers to coincide with the hours of operation at the harbor office so as to be available to hand out disinfecting wipes for people to use on the handles and bench prior to use.

A teleconference with the Army Corp of Engineers was held on the 15th of April. Topics of discussion were ice thickness, timelines and disposal of material, also discussed were any local and state mandates put into place for safety of all involved.

Due to the “real Winter” we had this year and the amount of ice in Ninilchik harbor the dredge crew will be a few days late getting into Dillingham and are scheduled to arrive around the 15th of May.

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MEMORANDUM

Date: May 6, 2020
To: Tod Larson, City Manager
From: Luke Moody, Public Works Director
Subject: Monthly Staff Report

Safety

All employees within the Public Works Department receive a safety class at the beginning of their work week. Safety classes are conducted by supervisors or the Foreman. Special instructions and implementations have taken place as a COVID – 19 Response.

Building and Grounds

Building and Grounds have been busy with cold temperatures and have successfully completed work orders in a timely manner.

- Buildings and Grounds have been busy with spring cleaning around the city.
- Will be assisting with Community Clean Up May 8-10.
- All City owed buildings have been entered into the new Public Works Software. Work Orders will soon be processed through this software as well.
- Building and Grounds is working with Planning on Lighting Project (VEEP).

City Garage

The City Garage mechanics have been busy making the transition to Spring.

- There has been one mechanic resignation, effective at the end of the month. Public Works will advertise for a Heavy Equipment Mechanic soon.
- Scheduled interval services continue to take place on all city fleet vehicles.
- Garage reorganization is taking place on a daily basis and we will be moving forward with inventory to develop a property book and new accountability procedures.
- Assisting Streets with equipment availability and transport of heavy equipment to job sites.

Landfill

The Landfill is fully operational and improving daily.

- New hire has extensive knowledge in operating heavy equipment.

- All heavy equipment is fully operational.
- The fish waste disposal will take place in the new cell this year. Customers will dispose directly into the cell rather than in fish bins.
- All storage containers have been cleaned up, including bulbs and electrical components.
- The incinerator is fully operational and utilized.
- Public Works has been working with the Finance Department and will be receiving a cash handling course.
- Landfill permit is compliant.
- Developing a plan for closure of the current cell in conjunction with the opening of cell 3 continues. Public Works intends on covering the cell internally to minimize financial liability.
- Working with FOL for bear fencing and other projects.

Water/Waste Water

Our focus is daily maintenance, preventive maintenance, personal protective equipment, and further training.

- All water supply testing has resulted as within range.
- Working with Planning to update GIS for better accuracy.
- The 2019 Consumer Confidence Report was submitted and published successfully.
- Continue to report to the water plant daily. Continuing to take precautions and adhere to the mandates to ensure personnel do not take ill and are able to continue to provide consistent water and waste water service to the citizens of Dillingham.
- Intend on being heavily involved with streets project and water improvement.

Streets

Operators have been busy with road repair and grading roads.

- A portion of Nerka and Bayside Drive have been repaired. Squaw Creek and other roads are next on our list.
- Signs have been installed to assist in quarantine awareness.
- Developing a list of culverts that will need replaced.
- Department is working with Planning to implement the Gravel Road Management System. A new iPad was received and is being programmed by our Engineer.

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MEMORANDUM

Date: April 24, 2020
To: Tod Larson, City Manager
From: Ida Noonkesser, Director
Subject: Monthly Staff Report

During the month of February, and March, the Senior Center served 397 congregate meals to 61 individuals, 110 home delivered meals to 14 individuals, gave 105 assisted rides to 9 individuals and 163 unassisted rides to 35 individuals.

We had ten renters in the month of February, and March.

Gina Carpenter came to the Senior Center to give flu shots for the elders before the COVID-19 outbreak. The shots were for normal Influenza.

Diabetes program personnel (Maryann Morgal, Sumi Tohan, and Flora) from Kanaknak came and demonstrate of healthy cooking. Twenty-four elders participated in the cooking activity. They seemed to enjoy it.

March has been very slow with a closure for a few weeks while we looked at safe delivery methods and staff did quarantine.

The sewer system backed up the second week of March at the Senior Center and it took a week and a half for Public Works to figure out the issue and take care of it. We appreciate them working so hard to get us running again during winter.

With the beginning of the COVID-19 crisis, Amelia Christensen and I sanitized the whole building. We shut down food service for a few weeks while we waited for our order of disposable containers to arrive and to set up a process to serve our meals safely for elders. During this time our BBNA workers also worked from home and were only in and out. Once we received our order of disposable to-go containers we began limited home delivery again. Our cook resigned first week of March, which also caused the counts for March to be low.

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BRISTOL BAY

Regional Seafood Development Association

To: Office of Governor Mike Dunleavy
From: Bristol Bay Regional Seafood Development Association
Date: May 1, 2020
RE: COVID-19 Resource Needs for the Bristol Bay Salmon Industry

Dear Governor Dunleavy,

On behalf of Bristol Bay's 8,200 driftnet and setnet fishermen, the Bristol Bay Regional Seafood Development Association (BBRSDA) would like to express our appreciation for the State of Alaska's outstanding commitment to address the COVID-19 pandemic. We are very pleased to see the State collaborate with industry, local communities, and tribal organizations to protect public health and maintain critical economic activities, such as commercial seafood operations.

With Health Mandate #017 providing a protection plan for Alaska's commercial fishermen, and other mandates addressing travel protocols we would like to outline what resources will be needed to meet the goals of maintaining public health and critical infrastructure activities in Bristol Bay.

It is hard to understate how important the Bristol Bay salmon fishery is to Alaska's economy and to national health. Bristol Bay contains the world's most valuable wild salmon fishery in the world and the region is responsible for over half of Alaska's commercial salmon harvest value. The Bristol Bay fishery is prosecuted by roughly 2,000 small businesses which create 5,200 FTE jobs and \$272 million of labor income in Alaska, providing over 400 million servings of healthy, wild sockeye salmon – a strategic public health need during this pandemic.

BBRSDA has reached out to processing companies, municipalities, and tribes in order to have a thorough understanding of the issues and begin addressing solutions that will protect local communities, while allowing for a fishery to occur. We have been actively engaged with State of Alaska officials in the Governor's office, ADF&G, DHSS, DCCED, CFEC, and the Unified Command. We are also in communication daily with officials regarding the logistical support needed.

BBRSDA would like to formally request the State of Alaska ensure the following needs are met:

1. Medical services
 - a. Screening supplies and personnel
 - b. Testing supplies and personnel, as available and required
 - i. Quarantine lodging for people who test positive
 - c. Supplemental medical capacity
 - i. Contracting two floating medical ships to be stationed in the east and west side of the Bristol Bay fishing district, and/or
 - ii. Rapidly deployable shoreside field hospitals
2. Local infrastructure support and distribution of PPE supplies
 - a. Resources to create an alternate disembarking and baggage retrieval process to avoid traffic into local airports
 - b. Temporary bathroom facilities

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- c. Funding for delivery services to avoid traffic in retail stores
 - d. Ground transportation for transporting fishermen from airport to boatyard
 - e. Hand sanitizer: liquid/gel and dispensers to be posted near doors or common touch points
 - f. Masks & thermometers
 - g. Cleaning supplies and spray bottles for disinfecting surfaces
3. Compliance needs
- a. Enforcement: security contractors to enforce quarantine & other directives
 - b. Funding and support for signage
 - c. Funding to create digital, media, and printed materials to educate industry for successful compliance
 - d. Communication support funding for industry and local government

All of these items are important, but BBRSDA requests that the State of Alaska expedite support for a) enforcement, b) sanitizer for local businesses and community buildings, and c) supplies for an auxiliary disembarking area at the Dillingham and King Salmon airport. Ensuring people are following the Mandates, disinfecting common touch points, and avoiding people crowding in the airport are immediate needs.

In addition, BBRSDA is incurring costs to support the mutual safety goals of industry and government, and would request reimbursement for related costs at a later date. Thus far, these include:

- Communications and support contractors
- Quarantine and all-clear flags
- Buffs (i.e. cloth facemasks)

The board, staff, and members of BBRSDA will continue working hard to find solutions to the issues in prosecuting such a large fishery in an area without large resource capabilities. We are standing by to support the State of Alaska to keep people safe while providing critical services to Alaska. Please do not hesitate to have State personnel reach out to us for input on evolving planning efforts or to discuss what resources will be needed to ensure successful execution and compliance on the part of fishermen. We have heard loud and clear from our fleet. They want to have a fishery, they want to protect public health, and they want to comply with State Mandates and local ordinances. We just have to work together to make this happen.

Sincerely,

Andy Wink
BBRSDA Executive Director
andy@bbrsda.com // 907.677.2374

CC: Ben Stevens, Chief of Staff, Office of the Governor; John Moller, Policy Advisor, Office of the Governor; Adam Crum, Commissioner, DHSS; Doug Vincent-Lang, Commissioner, ADF&G; Sam Rabung, Commercial Fisheries Division Director, ADF&G; Heidi Hedberg, Division Director, DHSS; Bryan Fisher, Emergency Program Manager, MVA; Thomas Koloski, Critical Infrastructure Sustainment Branch, MVA; Julie Anderson, Commissioner, DCCED.

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING DILLINGHAM MUNICIPAL CODE CHAPTER 8.04 TO PROHIBIT THE DISTRIBUTION OF SINGLE-USE DISPOSABLE PLASTIC SHOPPING BAGS

WHEREAS, the use of single-use carry-out disposable plastic shopping bags in the City of Dillingham ("City") creates a burden on the environment, endangers wildlife, and has been shown to be harmful to bodies of water and problematic for solid waste management; and

WHEREAS, to decrease the number of littered disposable plastic shopping bags in the City, it is necessary to restrict general use; and

WHEREAS, it is in the best interest of the health, safety, and welfare of all residents to restrict the use of single-use disposable plastic shopping bags; and

WHEREAS, plastic carryout bags do not biodegrade, create problematic environmental issues, and frequently escape from trash containers and landfills creating a burden on residents and the City for clean-up;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Section 8.04.020. Section 8.04.020 of the Dillingham Municipal Code is hereby amended to read as follows [added language is underlined]:

8.04.020 Definitions.

The following definitions apply throughout this chapter:

"Affected Establishment" means any retail or commercial business that sells goods or prepared food, including but not limited to grocery stores, pharmacies, retail stores, and restaurants.

"Fish waste" means the leftover parts of dead fish, including carcasses, heads, tails, and internal organs.

"Garbage" means all putrescible solid wastes, including vegetable matter, animal feces, and carcasses of small animals.

“Hazardous waste” means any substances or materials that, by reason of their toxic, caustic, corrosive, abrasive, or otherwise injurious properties, may be detrimental or deleterious to the health of any person handling or otherwise coming into contact with such substances or materials. This includes those materials or substances which have been so designated by the State Department of Environmental Conservation and/or the Environmental Protection Agency.

“Person” means any individual, firm, governmental unit, organization, partnership, corporation, company or other entity.

“Putrescible waste” means material that can decompose and cause obnoxious odors.

“Refuse” means any putrescible or nonputrescible solid waste, except human excreta.

“Rubbish” means nonputrescible solid wastes.

“Secured load” means a load of refuse which has been secured and covered in the vehicle in a manner that will prevent any part of the refuse from leaving the vehicle while the vehicle is moving.

“Single-Use Plastic Disposable Shopping Bag” means a bag less than 2.25 mils thick made from plastic, or any material not marked or labeled “compostable”, that is neither intended nor suitable for continuous reuse and that is, designed to carry purchases from the seller’s premises, except for: bags used by customers inside stores to package bulk items such as fruit, vegetables, nuts, grains, candy, or small hardware items, such as nails and bolts; bags used to contain dampness or leaks from items such as frozen foods, meat, or fish, flowers or potted plants; bags used to protect prepared foods or bakery goods; bags provided by pharmacists to contain prescription drugs; newspaper bags, laundry, or dry cleaning bags; or bags sold for consumer use off the seller’s premises for such purposes as the collection and disposal of garbage, pet waste, or yard waste.

Section 3. Adoption of Section 8.04.120. Section 8.04.120 of the Dillingham Municipal Code is hereby adopted as follows:

8.04.120 Single-Use Plastic Disposable Shopping Bag Prohibited

- A. No affected retail establishment may provide to any customer a new single-use plastic disposable shopping bag for the purpose of carrying away goods from the point of sale.
- B. No person may distribute single-use plastic disposable shopping bags at any city facility or any event held on city property.

Section 4. Amendment of Section 1.20.040. Section 1.20.040 of the Dillingham Municipal Code is hereby amended by the addition of new language to read as follows:

Code Section	Offense	Penalty/Fine
DMC 8.04.120	Distribution of single-use plastic disposable shopping bag.	\$300

Section 4. Effective Date. This ordinance is effective December 31, 2020.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on May 7, 2020.

Alice Ruby, Mayor

[SEAL]

ATTEST:

Lori Goodell, City Clerk

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CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2020-03

AN ORDINANCE OF THE COUNCIL OF THE CITY OF DILLINGHAM AMENDING TITLE 4 OF THE DILLINGHAM MUNICIPAL CODE TO ADOPT BY REFERENCE THE ALASKA REMOTE SELLERS SALES TAX CODE AND TO AMEND CHAPTER 4.20 TO ADD AND AMEND DEFINITIONS, REPEAL SECTION 4.20.150, ADOPT A LATE FILING FEE, AND AMEND PENALTY AND INTEREST PROVISIONS

WHEREAS, Section 4.20.050(H)(1) of the Dillingham City Code currently exempts from sales tax sales which the City is prohibited from taxing by the Constitution of the United States; and

WHEREAS, historically the Constitution of the United States prohibited the City from levying sales tax on mail order or internet purchases from businesses located outside the State of Alaska who did not have a physical presence within city boundaries; and

WHEREAS, the United States Supreme Court decided on June 21, 2018 in the case South Dakota v. Wayfair that the United States Constitution no longer prohibited the City from levying sales tax on mail order or internet purchases from businesses located outside the State of Alaska; and

WHEREAS, in response to the Wayfair decision, several Alaskan municipalities formed the Alaska Remote Sellers Sales Tax Commission (“the Commission”); and

WHEREAS, on January 6, 2020, the Commission adopted the Alaska Remote Sellers Sales Tax Code and Supplemental Definitions (“Uniform Code”); and

WHEREAS, on January 16, 2020, the Dillingham City Council adopted Resolution 2019-35 authorizing the City of Dillingham to become a member of the Commission and authorizing the City Manager to sign the Alaska Intergovernmental Remote Seller Sales Tax Agreement (“the Agreement”) and to obtain and maintain membership in the Commission; and

WHEREAS, the Agreement requires Commission members to adopt the Uniform Code by reference or otherwise in its entirety by May 5, 2020; and

WHEREAS, some provisions of the Uniform Code differ from existing requirements of Chapter 4.20 of the Dillingham Municipal Code; and

WHEREAS, it is preferable to harmonize definitions and administrative provisions of Chapter 4.20 with the Uniform Code;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dillingham, Alaska, as follows:

Section 1. Sections 3 through 8 of this ordinance are of a permanent and general nature and shall be included in the Dillingham City Code.

Section 2. Legislative Findings.

(1) The inability to effectively collect city sales tax from remote sellers who deliver tangible personal property, any products transferred electronically, or services directly to the citizens of Dillingham is seriously eroding the sales tax base of Dillingham, causing revenue losses and imminent harm to this city through the loss of critical funding for services;

(2) The harms from the revenue losses are especially serious in Dillingham because sales tax revenues are essential in funding local services;

(3) The structural advantages of remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that further erosion of this city's sales tax base is likely soon;

(5) Remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from this state's market, including the economy generally, as well as state and city infrastructure;

(6) In contrast with the expanding harms caused to the city from this exemption of sales tax collection duties for remote sellers, the costs of that collection have fallen. Given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Alaska generally and Dillingham specifically.

(7) The failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities;

(8) Delivery of goods and services into local municipalities rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services;

Section 3. Amendment of Section 4.10.010. Section 4.10.010 of the Dillingham Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

The city shall levy and collect a tax on sales, rents, and services provided within the city, pursuant to the provisions of AS 29.45.700(c) and AS 29.45.650 through AS 29.45.670, this Chapter and Chapter 4.23, to be deposited in the general fund of the city and used for general revenue for the city.

Section 4. Amendment of Section 4.10.020. Section 4.10.020 of the Dillingham Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter and in chapter 4.23, have the following meanings:

“Advertising” means services rendered to promote a product, service, idea, concept, issue, or the image of a person, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including research;

design; layout; preliminary and final art preparation; creative consultation, coordination, direction, and supervision; script and copywriting; editing; and account management services.

“Alcoholic beverage” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume. spirituous, vinous, malt or other fermented or distilled liquids, whatever the origin, that are intended for human consumption as a beverage and that contain alcohol.

“ATV” or “off-highway vehicle” means a vehicle designed or adapted for cross-country operation over unimproved terrain, ice or snow, and which has been declared by its owner at the time of registration and determined by the department to be unsuitable for general highway use, although the vehicle may make incidental use of a highway as provided in this title; it does not include implements of husbandry and special mobile equipment.

“Banking services” means deposit account services, loan transaction fees, transactions relating to the sale or exchange of currency or securities, transactions for conversion of negotiable instruments, safe deposit services, escrow collection services, late fees, overdraft fees, and interest charged on past due accounts.

“Boat” means a vessel used or capable of being used as a means of transportation on the water.

“Buyer” means a person to whom a sale of property or product is made or to whom a service is furnished and includes persons who are purchasers of personal or real property, rental space or services.

“Child care” means a regular service of care and education provided for compensation for any part of a day less than 24 hours to a child or children under 16 years of age whose parents work outside the home, attend an educational program or are otherwise unable to care for their children.

“Coin-operated machine” means a slot machine, marble machine, juke box, merchandise vending machine, laundry, dry cleaning and any other service dispensing machine or amusement device of any kind which requires the insertion of currency to make it operative.

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or

B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

C. Intended to affect the structure or any function of the body.

“Dues, Membership and Subscription” means monies paid for the purpose of membership, or qualifying or becoming eligible for goods or services, or discounts to goods or services.

“Food stamps” means obligations of the United States government issued or transferred by means of food coupons or food stamps to enable the purchase of food for the eligible household.

“Fuel” means refined petroleum and petroleum-based products used for internal combustion engines and as the primary source for residential heating or domestic hot water. This may also include other types of fossil fuels as well as fuel sources that are renewable.

“Government” means the federal government and any agency or instrumentality thereof; any State and any agency or instrumentality thereof; any local government within a State, and any unit, agency, or instrumentality of such local government; any tribal government; any other governmental instrumentality.

“Hotel” means any structure, or any portion of a structure, which is used, occupied, intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, bed and breakfast, motel, home or house trailer at a fixed location, or other similar structure or portion thereof.

“Insurance” means a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

“Internet service” means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

“Medical equipment and supplies, and prescriptions” means all medicines, medical goods or equipment prescribed by a health care provider licensed to practice in Alaska or any other state in the United States.

“Medical services” means those professional services rendered by persons duly licensed under the laws of this state to practice medicine, surgery, chiropractic, podiatry, dentistry, and other professional services rendered by a licensed midwife, certified registered nurse practitioners, and psychiatric and mental health nurse clinical specialists, and appliances, drugs, medicines, supplies, and nursing care necessary in connection with the services, or the expense indemnity for the services, appliances, drugs, medicines, supplies, and care, as may be specified in any nonprofit medical service plan. “Medical services” include hospital services.

“Monthly” means occurring once per calendar month.

“Newspaper” means a publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of not more than two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.

“Person” means and includes individual and every person recognized in law and every group of persons who act as a unit an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Professional services” means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or

alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations that require a professional license under Alaska Statute.

“Property” and “product” means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive” means

- A. Taking possession of property;
- B. Making first use of services;
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” or “sale at retail” means any transfer of property for consideration for any purpose other than for resale, every sale or rental of real property or sale or rental of personal property (whether tangible or intangible), every sale or exchange of services, including barter, credit, lease, installment and conditional sales, for any purpose other than resale when such resale is made in the regular course of business and includes, but is not limited to the following transactions:

- a. Selling property; or
- b. Renting, leasing, or letting of real or personal property, accommodations, facilities, or services of any nature whatsoever; or
- c. Storing for use or consumption any item or article of personal property; or
- d. Rendering occupational or professional services of any nature whatsoever; or
- e. Furnishing materials and rendering services in connection therewith to accomplish the installation, construction, repair or completion of a specific end product or project; or
- f. Selling real estate comprising parcels of land and buildings or improvements thereto, either separately or conjunctively; provided, however, that an isolated sale of property by an owner not engaged in the real estate business shall not be taxable; but in the event a commission or other fee on such isolated sales is collected by a real estate agent or broker, the tax shall be applicable to the commission or service charge of the agent or broker; or
- g. Transfer of the product of a manufacture or construction process to the user of the product; or

h. Importing, or causing to be imported, property from outside the city for sale or for rent, storage, distribution, use or consumption within the city; or

i. Soliciting business, either directly or indirectly, as a representative or agent of a manufacturer, wholesaler, retailer, or distributor of merchandise or by the distribution of catalogs or other advertising matter or by any means whatever, and by reason thereof receiving orders for property from buyers or consumers for use, consumption or distribution for use, consumption or storage within the city; and the foregoing shall include every person who, as a representative, agent or solicitor receives and accepts orders from buyers or consumers from within the city for future delivery; or

j. Selling or furnishing, preparing and serving food or beverages, alcoholic or nonalcoholic, for consumption on or off the premises of the seller; or

k. Selling bingo cards or pull tabs; or

l. Every use or play of a coin-operated machine; or

m. Transacting or engaging in any type of business not enumerated herein.

“Sale within the City”

1. For the purpose of the tax levied by this chapter, a sale of personal property is made within the city if:

a. The sale is made by a business located within the city;

b. The sale is made by a seller located outside of the city as a result of solicitation inside of the city and payment or delivery occurs within the city;

c. The sale is made by a seller whose principal place of business is outside of the city if such seller maintains any office, distribution, sales house, warehouse or any other place of business or solicits business or receives orders through any agency, salesperson or other type of representative within the city.

2. For the purposes of the tax levied by this chapter, services are within the city if, regardless of the location of the business rendering the services:

a. The services, or any essential or substantial part thereof, are rendered within the city; or

b. The order for the services is solicited or received within the city or payment is received within the city, or the services are rendered by a business maintaining an office, agent, or employee within the city.

“Sales price” or “selling price” or purchase price means the total amount of any consideration paid by a buyer in terms of money and in the case of a sale involving an exchange of property and/or services, the fair market value of the property or services exchanged, including delivery or installation costs, means consideration, including cash, credit, property, products, and services,

for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, but excluding the sales tax without any deduction for the following:

- A. The seller's cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

"Seller" means and includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales including consignees and persons who conduct sales where items will be sold for a commission or fee or a marketplace facilitator facilitating sales on behalf of a seller.

"Services" means and includes all services of every manner and description which are performed or furnished for compensation of any kind, except services rendered to an employer by an employee, including but not limited to:

1. Professional services;
2. Services in which a product or sale of property may be involved including personal property made to order;
3. The sale of transportation services;
4. Services rendered for compensation by any person who furnishes any services in the course of their business or occupation;
5. Services wherein labor and materials are used to accomplish a specified result;
6. Commissions earned during business conducted within the city; and
7. Any other services including advertising, maintenance, recreation, amusement and craftsmen's services.

"Snow Machine" means a motor vehicle designed to travel over ice or snow, and supported in part by skis, belts, cleats, or low-pressure tires.

"Tax cap" means a maximum taxable transaction.

"Telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

"Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive

calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the occupant has paid in advance for over thirty days' occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

"Transportation services" means the transportation of individuals for hire.

"Wholesaler" means a merchant who sells goods, in the regular course of his business, to retailers who sell to consumers, or sells goods in the regular course of his business to jobbers, dealers, or other wholesalers, for the purpose of taxable resale in the city. To qualify as a wholesaler, the merchant must be regularly recognized as such, and known to the trade as such.

"Wholesale sale" means a sale of goods by a merchant selling them in the regular course of his business; or a sale of goods by a merchant selling them in the regular course of his business at wholesale prices to jobbers, dealers, or other wholesalers for the purpose of taxable resale in the city. The term does not include a sale by a wholesaler to users or customers when such sale is not for taxable resale in the city.

Section 5. Repeal of Section 4.20.150. Section 4.20.150 of the Dillingham Municipal Code is hereby repealed in its entirety.

Section 6. Amendment of Section 4.20.210. Section 4.20.210 of the Dillingham Municipal Code is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

A. It is unlawful for any seller who is required to obtain a certificate of authority to collect city sales tax:

1. To fail to obtain a certificate of authority within the time prescribed by this chapter.
2. To fail to file a return as required by this chapter, or fail to remit taxes collected or which should have been collected. The filing of an incomplete return is the equivalent of filing no return.
3. To falsify or knowingly misrepresent any record required by this chapter.
4. To deny the city permission to inspect records required to be kept by this chapter.

B. In addition to penalties for violations of this section set forth in Section 1.20.040, the city may recover by civil action the amount which the seller should have remitted to the city as sales tax, plus a late filing fee of twenty-five dollars per month, plus a penalty of ten five percent of the taxes collected but not remitted, or which should have been collected per month or fraction thereof until a total of 20% of delinquent tax has been reached. The city may also recover full actual reasonable attorney's fees in any action against a delinquent seller.

C. The city may also have any person or business that violates this section, or any vessel owned by any such person or business, placed on the city's denied services list using the procedures set forth in Chapter 4.40.

D. Fees, penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to fees, penalties and interest, second to past due sales tax.

E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.

F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the City, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the seller, within forty-five (45) calendar days after the date of delinquency. A seller may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year.

Section 7. Amendment of Section 4.20.220. Section 4.20.220 of the Dillingham Municipal Code is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

A seller who fails to remit payments in a timely manner shall be liable for interest charges of six fifteen percent per annum on the amount of delinquent taxes accruing from the due date until paid in full. Interest shall not accrue on any penalty imposed under Section 4.20.210(B).

Section 8. Adoption by Reference of Alaska Remote Sellers Sales Tax Code. The Dillingham Code of Ordinances is hereby amended by adopting a new Chapter 4.23 to read as follows:

Chapter 4.23
TAX ON SALES MADE BY REMOTE SELLERS

Sections

- 4.23.010 Scope
- 4.23.020 Copies on File
- 4.23.030 Definitions
- 4.23.040 Adoption of Alaska Remote Sellers Sales Tax Code
- 4.23.050 Delegation of Authority

4.23.010 Scope
This chapter applies only to sales made by remote sellers as defined herein.

4.23.020 Copies on File
At least five copies of the Alaska Remote Sellers Sales Tax Code shall be made available for public inspection at least fifteen days prior to the public hearing for adoption of this Chapter at the time and place set out in the notice published for the hearing of the ordinance. Copies shall be available for public review at the following locations: one copy at the office of the city clerk; one

copy at the city planning department; one copy at the city fire department; and, two copies at the city library. A person may request, and the city clerk shall provide, a copy of the code(s) at no more than cost.

4.23.030 Definitions

A. When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.

B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.

C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services through a physical or electronic marketplace operated by the person, and engages:

(a) Directly or indirectly, through one or more affiliated persons in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or

(iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller’s products:

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

- (iv) Setting prices;
- (v) Branding sales as those of the marketplace facilitator;
- (vi) Order taking;
- (vii) Advertising or promotion; or
- (viii) Providing customer service or accepting or assisting with returns or exchanges.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller’s ability to establish or maintain a market for its products in this state.
3. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;
4. Rents or Leases property located within the boundaries of the local taxing jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service rendered.

A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.

B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.

C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;
- E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
- F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

4.23.040 Adoption of Alaska Remote Sellers Sales Tax Code

The City adopts by reference the January 6, 2020 edition of all provisions of the Alaska Remote Sellers Sales Tax Code (including the definitional section included in section 4.23.030 above) and that portion of the Supplemental Definitions thereto not included in section 4.20.020.

4.23.050 Delegation of Authority

The City hereby delegates the authority to administer and collect tax on sales made by remote sellers to the Commission including remote seller sales tax registration, exemption certification, collection, remittance, and audit authority.

Section 9. Effective Date. This ordinance shall be effective upon adoption. No obligation to collect tax resulting from adoption of this ordinance shall be applied retroactively.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on May 7, 2020.

Alice Ruby, Mayor

[SEAL]

ATTEST:

Lori Goodell, City Clerk

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CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2020-04

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING CHAPTER 4.30, CONTRACT AND PURCHASE PROCEDURES TO ADJUST THE PUCHASE PARAMETERS

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment to Chapter 4.30 Contract and Purchase Procedures.
Section 4.30 of the Dillingham Municipal Code is hereby amended as follows with new text displayed in **bold** and underlined font and deleted text displayed in strike out font.

Sections:

4.30.050 Purchase orders.

4.30.060 Contracts/purchases of under one thousand dollars.

4.30.070 Contract/purchases of one thousand dollars to five thousand dollars.

4.30.080 Contracts/purchases of five thousand dollars to twenty thousand dollars.

4.30.090 Contracts/purchases of twenty thousand dollars or more.

4.30.050 Purchase Orders.

A. The city manager is responsible for the establishment of a purchasing system under which all merchandise, supplies and services will be purchased for the city, except for the school district.

B. Purchase orders shall be issued upon requisitions signed by the head of the division requesting the purchase. All requisitions shall be filed with the purchasing agent and no purchase shall be made until an order has been obtained from him/her.

C. In the absence of the city manager, a person designated in writing by him/her, is hereby authorized to sign purchase orders for supplies which do not exceed ~~one thousand dollars~~ **\$2,000** in value, in conformance with control procedures to be established by the city manager for that purpose.

4.30.060 Contracts/purchases of under ~~one thousand dollars~~ \$2,000.

Unless otherwise required by law, contracts and purchases estimated by the city manager to be not in excess of ~~one thousand dollars~~ **\$2,000** may be made on the open market without competitive bidding or quotations.

4.30.070 Contracts/purchases of ~~one thousand dollars~~ \$2,000 to ~~five thousand dollars~~ \$7,999.

Unless otherwise required by law, contracts and purchases estimated by the city manager in writing to be between ~~one thousand~~ **\$2,000** and ~~five thousand dollars~~ **\$7,999** may be made in the open market without competitive sealed bid or public notice; however whenever possible the city manager shall obtain at least three price quotes and shall award the contract

purchase to the lowest responsible bidder. The city manager shall maintain a written record of the price quotations requested and received.

4.30.080 Contracts/purchases of ~~five thousand dollars~~ \$8,000 to ~~twenty thousand dollars~~ \$29,999.

Unless otherwise required by law, contracts and purchases estimated by the city manager in writing to be between ~~five thousand~~ \$8,000 and ~~twenty thousand dollars~~ \$29,999 may be made in the open market without competitive sealed bid or public notice, subject to the following:

- A. Quotations and Award. Such open market contracts and purchases, whenever possible and practicable, shall be based upon at least three competitive written quotations from interested bidders and shall be awarded to the lowest qualified and responsible bidder.
- B. Interested Bidder's List. The city manager shall create and maintain a list of interested bidders, which list shall contain the names of suppliers who have declared their interest in being solicited for quotations on specific classes of supplies or services. Names of suppliers who have become inactive in submitting quotations may be removed from the list.
- C. Written Quotations. Written quotations may be solicited by telephone, in person or in writing from bidders in the interested bidders list and from others known to be interested in submitting quotations. All quotations shall be submitted in writing and a detailed record shall be made of the quotations received. The city manager may consider the prices in published mail order catalogs as written quotations.
- D. City Council Approval. The city manager shall review all quotations and award the contract or purchase in writing. The city manager shall notify the city council of the award of such contract or purchase at the next regular city council meeting.
- E. Records. The city manager shall keep a written record of all such open market contracts and purchases and the quotations submitted in competition thereon. Such records shall be open to public inspection during regular business hours. Records of such open market purchases may be disposed of two years following the action.

4.30.090 Contracts/purchases of ~~twenty thousand dollars~~ \$30,000 or more.

- A. Unless exempt under the provisions of Section 4.30.130, contracts for and purchases of supplies estimated by the city manager in writing to exceed ~~twenty thousand dollars~~ \$30,000 shall be made by competitive sealed bid.
- B. Unless exempt under the provisions of Section 4.30.130, contracts for professional services estimated by the city manager in writing to exceed ~~twenty thousand dollars~~ \$30,000 shall be made by competitive sealed proposal.
- C. The city manager may provide for a process whereby interested bidders/proposers submit statements of qualifications. From these statements, the manager shall determine those who appear to satisfy the "responsible bidder" criteria as set forth at Section 4.30.030(A) and may limit the submittal of bids and proposals pursuant to Section 4.30.100 to only those parties.

Section 3. Effective Date. This ordinance is effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on May 7, 2020.

Alice Ruby, Mayor [SEAL]

ATTEST:

City Clerk

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MEMORANDUM

TO: Tod Larsen, City Manager



FROM: Brooks W. Chandler
Boyd, Chandler, Falconer & Munson, LLP

RE: Emergency Ordinances 2020-08, 2020-09, 2020-10

DATE: May 6, 2020

7.5 million people live in Hong Kong. If their data is to be believed- 4 of them have died from COVID-19. The prevention methods used in Hong Kong include: 1) limits on who can enter the city (mostly just locals), 2) mandatory testing upon entry from outside the City, 3) mandatory 14 day quarantine on all entering from outside the City regardless of test results, 4) mandatory wearing of face masks in public, 5) mandatory social distancing. The group of emergency ordinances prepared following last week's council meeting reflect potential policy choices that would implement many aspects of the Hong Kong prevention system in Dillingham. Can a democracy use the same methods as that deployed under a political system with substantially less personal freedom? The honest answer is there are no judicial decisions in Alaska setting the boundaries for governmental "mandates" during a pandemic. There is no question an Alaskan municipality can impose greater restrictions on personal liberty during a pandemic but where the boundary between permissible and impermissible mandates lies is undefined. Requiring someone to consent to a physical invasion of their body as a condition for being allowed entry to Dillingham is an extreme measure. Council will need to decide if the health risks presented by COVID-19 justify such action.

This memorandum reviews and summarizes several draft emergency ordinances. The legal baseline remains that as a first class municipality outside the boundaries of an unorganized

borough the City of Dillingham has all power “not prohibited by law”. There is no state law explicitly prohibiting any of the policies and requirements contained in the draft ordinances. But as previously advised, the constitutional boundaries are not obvious because there has not been a pandemic in over 100 years.

A. Legislative Findings

Rather than relist these the findings in EO 2020-07 have been incorporated by reference in all of the emergency ordinances. Several updated facts have been added. A reference to an updated Curyung resolution has been added. And it is important to review findings 16, 17, 20, 31, 32, 34, 35-43 to make sure they remain accurate. If they are no longer accurate they should be changed.

B. Emergency Ordinance 2020-08

Emergency Ordinance 2020-08 (“EO-08”) requires face masks and social distancing. It also incorporates Mandate 16 and Mandate 17 cleaning and disinfecting standards as a city ordinance. This provides Dillingham with the ability to enforce these requirements directly rather than relying on state enforcement. The ordinance has been worded to “freeze” the state mandates in place as local rules. Even if the State repeals or modifies the mandates they will remain the standard in Dillingham through the end of June.

In response to concerns about enforcement two enforcement options are set out in Section 8. One is the maximum \$1,000 penalty limit on a minor offense set by state law. The other is a graduated penalty that increases with repeat violations. Council can decide which penalty to adopt by making a motion to amend the draft to delete either Section 8(A) or section 8(B).

Section 7 requires compliance with dock and harbor rules. Section 5(C) authorizes the city manager and harbor master to make rules and regulations specific to use of city facilities including the small boat harbor. Examples of the type of authorized rules are provided but the specifics within each category of rule remain up to the manager and harbormaster. This general grant of authority means the specific rules developed will not be subject to council approval. This allows flexibility to respond to changing circumstances without calling a council meeting to specifically approve rules. If the city council wants to remain directly involved in approving rules a motion to amend Section 5(C) to add a sentence “All rules issued are subject to Council approval” should be added to this section.

C. Emergency Ordinance 2020-09

EO 2020-09 is a quarantine and isolation ordinance. Section 4 requires all persons arriving in Dillingham from outside the Dillingham Census area to quarantine for 14 days upon arrival. As I am sure you understand, limiting the persons required to quarantine potentially

reduces its effectiveness as public health protection. Persons from within Alaska but outside the Dillingham Census Area are included in the quarantine requirement. This is stricter than State Mandate 12 but is justified by Dillingham's unique facts which feature a huge influx of seasonal workers into a community with no reported cases of COVID-19 and limited medical facilities.

Section 4(B) lists where persons may quarantine. Council can add or subtract from this list by amending to delete certain subsections or adding additional subsections. On vessel quarantine is limited to 3 persons per vessel. If this seems too high or too low and amendment to change the limit can be proposed. Boat yards as well as vessels are mentioned based on the likelihood that persons quarantining on a vessel might be expected to walk around a boat yard. But whether to include these options should be considered together with the movement allowed as set forth in Section 6. Subsection C allows out of Dillingham quarantine time to "count" towards the 14 days. This is consistent with Mandate 17.

Subsection F is an alternative quarantine requirement. This requires quarantine before entry to Dillingham. This was mentioned as a possible requirement. If this is of interest a number of the acceptable quarantine sites listed in subsection B would need to be deleted by amendment. If this is not of interest a motion to amend the ordinance to delete Section 4(F) should be made.

Sections 6 and 7 limit movement to and from quarantine sites. Council could add to or subtract from the list by amendment.

Section 10 addresses what is required when someone tests positive for COVID-19. Isolation is more restrictive than quarantine. Subsections 1-4 envision the person remaining in Dillingham. Subsection 5 requires the person to leave Dillingham. As written these requirements apply equally to residents and non-residents. If council does not want to require a person testing positive to leave subsection 5 should be deleted by amending the draft ordinance.

I have other commitments for my time through 1 pm today. This memorandum will be supplemented this afternoon.

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CITY OF DILLINGHAM, ALASKA

EMERGENCY ORDINANCE NO. 2020-08

AN EMERGENCY ORDINANCE OF THE DILLINGHAM CITY COUNCIL REQUIRING PROTECTIVE MEASURES TO PREVENT THE SPREAD OF COVID 19

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Legislative Findings:

The legislative findings contained in Emergency Ordinance 2020-07 Section 1 numbered 1-46 are adopted by reference as if fully set forth herein. In addition Council makes the following legislative findings:

47. As of May 5, 2020 Dillingham still had 0 reported cases of COVID-19.

48. As of May 5, 2020 there had been 371 reported cases of COVID-19 in the State of Alaska.

49. As of May 5, 2020, the number of confirmed cases of COVID-19 infections in Oregon, Washington and California was:

- California - 54,937
- Oregon - 2,759
- Washington - 15,594

Section 2. Finding of Emergency. The City Council hereby finds the facts set forth in Section 1 constitute an emergency.

Section 3. Authority. This ordinance is enacted pursuant to the general police powers of the City of Dillingham to protect the public health and general welfare of persons in Dillingham and the City’s authority to regulate use of public facilities such as streets and highways and the Dillingham Small Boat Harbor.

Section 4. Face Mask Requirement.

A. All customers, employees and visitors of businesses and organizations that are open must wear face masks covering their nose and mouth to provide additional protection from spread of COVID-19 when entering and when inside those premises.

B. The face coverings need not be medical-grade masks or N95 respirators, but can be cloth face coverings. A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts or towels.

C. A business owner or operator of a building open to the public may refuse admission or service to any individual who fails to wear face coverings as required by this ordinance.

Section 5. Social Distancing.

A. All persons in Dillingham shall practice social distancing when in public or in a work area to the maximum extent possible.

B. For purposes of this ordinance social distancing is defined as maintaining a distance of six feet or greater from any individuals with whom you do not currently reside.

C. The City Manager and Harbor Master may issue rules and regulations governing use of city facilities to implement social distancing. These may include limiting hours of operation, designating separate hours of access for persons required to quarantine or be tested for presence of the virus that causes COVID-19, designating separate hours of access for residents and non-commercial fisherman, requiring delivery of goods to a designated area, limiting the number of floats in the small boat harbor and limiting the time a vessel may remain in the small boat harbor.

D. The owners or operators of all commercial fishing vessels in Dillingham shall comply with applicable social distancing requirements set forth in State Health Mandate 17, Appendix 1 issued April 23, 2020 which are incorporated herein by reference as if fully set forth. This requirement shall survive the subsequent repeal or modification of Mandate 17 or Appendix 1.

Section 6. Cleanliness Standards.

A. All businesses in Dillingham shall comply with applicable hygiene, cleaning and disinfecting requirements and protocols set forth in State Health Mandate 16 Attachments D, E, F, G and H which are incorporated herein by reference as if fully set forth. This requirement shall survive the subsequent repeal or modification of Mandate 16 or any of Attachments D, E, F, G and H.

B. The owners or operators of all commercial fishing vessels in Dillingham shall comply with applicable hygiene, cleaning and disinfecting requirements and protocols set forth in State Health Mandate 17 Appendix 1 issued April 23, 2020 which are incorporated herein by reference as if fully set forth. This requirement shall survive the subsequent repeal or modification of Mandate 17 or Appendix 1.

Section 7. Compliance with Harbor, Dock and Commercial Fishing Vendor Rules. All persons shall comply with the City of Dillingham Harbor, Dock and Commercial Fishing Vendor Rules including rules authorized by Section 5 (C) of this emergency ordinance.

Section 8. Enforcement.

A. Violations of this Emergency Ordinance shall be a Minor Offense. In accordance with AS 29.25.070(a), citations for violation of this ordinance may be disposed of as provided in AS 12.25.195 through 12.25.230, without a court appearance, upon payment of a one-thousand dollar (\$1,000) fine, plus the state surcharge required by AS 12.55.039 and 29.25.074. Fines must be paid to the court. The Alaska Court System’s Rule of Minor Offense Procedures applies. This fine may not be judicially reduced. Each day of violation shall be considered a separate offense.

B. Violations of this Emergency Ordinance shall be a Minor Offense. In accordance with AS 29.25.070(a), citations for violation of this ordinance may be disposed of as provided in AS 12.25.195 through 12.25.230, without a court appearance, upon payment of a one-hundred dollar (\$100) fine for a first offense, a five-hundred dollar (\$500) fine for a second offense and a one-thousand dollar (\$1,000) fine for all subsequent offenses, plus the state surcharge required by AS 12.55.039 and 29.25.074. Fines must be paid to the court. The Alaska Court System’s Rule of

Minor Offense Procedures applies. This fine may not be judicially reduced. Each day of violation shall be considered a separate offense.

Section 9. Code Provisions Superseded. This ordinance supersedes any inconsistent ordinances, rules, or regulations of the City of Dillingham.

Section 10. Effective Date. This ordinance is effective May 7 at 11:59 p.m. and shall continue in effect until June 29, 2020 unless extended by action of the city council. The adoption of this ordinance shall not in any manner affect any prosecution for violations of any other Emergency Ordinance) committed prior to the effective date hereof.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on May 7, 2020.

SEAL:

Alice Ruby, Mayor

ATTEST:

Lori Goodell, City Clerk

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CITY OF DILLINGHAM, ALASKA

EMERGENCY ORDINANCE NO. 2020-09

AN EMERGENCY ORDINANCE OF THE DILLINGHAM CITY COUNCIL REQUIRING QUARANTINE AND ISOLATION MEASURES TO PREVENT THE SPREAD OF COVID 19

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Legislative Findings:

The legislative findings contained in Emergency Ordinance 2020-07 Section 1 numbered 1-46 are adopted by reference as if fully set forth herein. In addition Council makes the following legislative findings:

47. As of May 5, 2020 Dillingham still had 0 reported cases of COVID-19.

48. As of May 5, 2020 there had been 371 reported cases of COVID-19 in the State of Alaska.

49. As of May 5, 2020, the number of confirmed cases of COVID-19 infections in Oregon, Washington and California was:

- California - 54,937
- Oregon - 2,759
- Washington - 15,594

Section 2. Finding of Emergency. The City Council hereby finds the facts set forth in Section 1 constitute an emergency.

Section 3. Authority. This ordinance is enacted pursuant to the general police powers of the City of Dillingham to protect the public health and general welfare of persons in Dillingham and the City's authority to regulate use of public facilities such as streets and highways and the Dillingham Small Boat Harbor.

Section 4. Mandatory Quarantine. This ordinance imposes a fourteen day self-quarantine on the following identified group of individuals arriving in Dillingham from places outside the Dillingham Census Area:

A. Any person who has not completed their quarantine immediately prior to arrival in Dillingham and; 1) is required to quarantine by Health Mandate 10 or Health Mandate 17 as of May 5, 2020; or 2) is a critical infrastructure worker as identified by the State of Alaska Essential Services and Critical Workforce Infrastructure Order dated April 10, 2020 and has traveled to Dillingham from elsewhere in Alaska.

B. Persons required to quarantine in Dillingham shall quarantine in one of the following locations:

1. On a commercial fishing vessel owned or operated by them or by their employer provided not more than three persons shall be allowed to complete a quarantine on the same vessel.
2. At a designated quarantine site managed and supervised by their employer and identified in their employer's COVID-19 protection plan approved by the State of Alaska a copy of which shall be provided to the Emergency Operations Center not later than 48 hours before the person's arrival in Dillingham.
3. At a designated quarantine site managed and supervised by the City of Dillingham or an authorized representative of the City of Dillingham if available. The daily costs for quarantine at a city designated site shall be one hundred dollars per person and shall be paid in advance by the individual quarantined or their employer.
4. At their Dillingham residence.
5. At their employer's Dillingham residence.
6. At the PAF boat yard.
7. At the Peter Pan boat yard.
8. At Gusty Wahl's boat yard.

C. Time spent in quarantine on a vessel or at an employer designated and supervised quarantine site immediately prior to arrival in Dillingham after initially entering Alaska shall be credited towards completion of the required quarantine.

D. Any person traveling to Dillingham for Critical Personal Needs as defined in Emergency Ordinance 2020-07 Section 8(C)(1) shall quarantine at their place of residence.

E. Quarantine requirements established by this ordinance shall survive any subsequent changes to or suspensions of Health Mandates 10, 12 or 17.

F. No person shall travel to Dillingham from outside the Dillingham Census Area to participate in a commercial fishing, sport fishing or subsistence fishing activity unless they have completed a 14 day quarantine outside city boundaries immediately prior to arrival in Dillingham.

Section 5. Social Distancing During Quarantine.

A. All persons in quarantine shall practice social distancing at their quarantine location to the maximum extent possible.

B. All persons entering a quarantine location shall practice social distancing while at the quarantine location to the maximum extent possible.

C. For purposes of this ordinance social distancing is defined as maintaining a distance of six feet or greater from any individuals with whom you do not currently reside.

Section 6. Limitation on Leaving Quarantine Location.

A. Any person required to quarantine shall not leave their quarantine location during their quarantine period for any reason other than to:

1. receive non-elective medical care.
2. go to their place of employment.
3. use designated portable toilets and shower facilities.
4. be tested for COVID-19.

B. Any authorized travel while in quarantine other than to use portable toilets is limited to a single trip each day directly to and from the quarantine location.

C. Person who have left a quarantine location to be tested for COVID-19 shall not leave the quarantine location for any reason other than to use designated portable toilets until they have received negative test results.

Section 7. Limitation on Entry to Quarantine Location.

A. No person shall enter a quarantine location unless:

1. they are in quarantine at that location.
2. they own a commercial fishing vessel stored at that location.
3. they are providing services to a commercial fishing vessel stored at that location
4. they are providing goods or materials to a commercial fishing vessel stored at that location that cannot be delivered to a designated delivery area immediately adjacent to that location.
5. the quarantine location is their usual place of residence.
6. they are providing medical services to a person in that location.

B. Any permitted entry to a quarantine location is limited to a single entry each day.

Section 8. Face Mask Requirement. All persons within a quarantine location other than their residence or their employer's residence must wear face masks covering their nose and mouth to provide additional protection from spread of COVID-19. The face coverings need not be medical-grade masks or N95 respirators, but can be cloth face coverings. A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels.

Section 9. Court Hearing. Any person required to quarantine by this ordinance may request a court hearing to challenge the limitations imposed by this order within forty-eight hours after their arrival in Dillingham or being first subject to the quarantine provisions of this ordinance using procedures set forth in AS 18.15.385(f), (g) and (h) incorporated herein by reference.

Section 10. Mandatory Isolation and Evacuation.

A. Any person required to quarantine by this ordinance who tests positive for COVID-19 shall immediately self-isolate at a designated self-isolation location and monitor for signs of sickness.

B. Persons required to isolate in Dillingham shall isolate at one of the following locations:

1. At a designated isolation site managed and supervised by their employer and identified in their employer's COVID-19 protection plan approved by the State of Alaska a copy of which shall be provided to the Emergency Operations Center not later than 48 hours before the person's arrival in Dillingham.
2. At a designated isolation site managed and supervised by the City of Dillingham or an authorized representative of the City of Dillingham if available. The daily costs for isolation at a city designated site shall be two hundred dollars per person and shall be paid by the individual isolated or their employer.
3. In a room within their residence which no other person is allowed to enter.
4. In a room at their employer's residence which no other person is allowed to enter.
5. At a location outside the boundaries of the City provided the person must again quarantine upon return to Dillingham unless they have isolated at a location within the Dillingham Census Area.

C. The period of isolation shall be a minimum of; 1) seventy-two hours since the person has had resolution of a fever without use of fever-reducing medications and has improvement in respiratory symptoms (cough, shortness of breath); and 2) ten days after the date of the persons first positive COVID-19 diagnostic test without developing symptoms of COVID-19.

D. Any person required to isolate who has entered Dillingham from outside the Dillingham Census Area and does not have permission to use any isolation site identified in subsections (B) 1-4 above must fly out of Dillingham within twenty-four hours after receipt of a positive COVID-19 test result unless immediate hospitalization is required.

Section 11. Enforcement.

A. Violations of this Emergency Ordinance shall be a Minor Offense. In accordance with AS 29.25.070(a), citations for violation of this ordinance may be disposed of as provided in AS 12.25.195 through 12.25.230, without a court appearance, upon payment of a one-thousand dollar (\$1,000) fine, plus the state surcharge required by AS 12.55.039 and 29.25.074. Fines must be paid to the court. The Alaska Court System's Rule of Minor Offense Procedures applies. This fine may not be judicially reduced. Each day of violation shall be considered a separate offense.

B. Violations of this Emergency Ordinance shall be a Minor Offense. In accordance with AS 29.25.070(a), citations for violation of this ordinance may be disposed of as provided in AS 12.25.195 through 12.25.230, without a court appearance, upon payment of a one-hundred dollar (\$100) fine for a first offense, a five-hundred dollar (\$500) fine for a second offense and a one-thousand dollar (\$1,000) fine for all subsequent offenses, plus the state surcharge required by AS 12.55.039 and 29.25.074. Fines must be paid to the court. The Alaska Court System's Rule of Minor Offense Procedures applies. This fine may not be judicially reduced. Each day of violation shall be considered a separate offense.

Section 12. Code Provisions Superseded. This ordinance supersedes any inconsistent ordinances, rules, or regulations of the City of Dillingham including the mandatory quarantine requirements of Section 15 of Emergency Ordinance No. 2020-07.

Section 13. Effective Date. This ordinance is effective May 7 at 11:59 p.m. and shall continue in effect until June 29, 2020 unless extended by action of the city council. The adoption of this ordinance shall not in any manner affect any prosecution for violations of any other Emergency Ordinance) committed prior to the effective date hereof.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on May 7, 2020.

SEAL:

Alice Ruby, Mayor

ATTEST:

Lori Goodell, City Clerk

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CITY OF DILLINGHAM, ALASKA

EMERGENCY ORDINANCE NO. 2020-10

AN EMERGENCY ORDINANCE OF THE DILLINGHAM CITY COUNCIL MANDATING HYGENIC STANDARDS FOR THE USE OF CITY FACILITIES AND PROPERTY TO FACILITATE SUSTAINABLE ECONOMIC OPENING

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Legislative findings.

The legislative findings contained in Emergency Ordinance 2020-07 Section 1 numbered 1-46 are adopted by reference as if fully set forth herein. In addition Council makes the following legislative findings:

47. As of May 5, 2020 Dillingham still had 0 reported cases of COVID-19.

48. As of May 5, 2020 there had been 371 reported cases of COVID-19 in the State of Alaska.

49. As of May 5, 2020, the number of confirmed cases of COVID-19 infections in Oregon, Washington and California was:

California - 54,937

Oregon - 2,759

Washington - 15,594

50. It is the goal of the city to promote sustainable “opening of the economy”.

51. Unrestricted use of city property and facilities is likely to result in unhygienic practices and, in turn, COVID-19 outbreaks, which would require complete closure of the facilities and result in significant economic loss.

51. To ensure that city property and facilities remain available for public use and to ensure that economic activity is sustainable, restrictions on the use of city property and facilities to ensure their continued use are desirable.

52. To further federal, state, and city goals of “opening the economy” and ensuring that it can remain open, the city council has determined that short-term use restrictions are necessary.

Section 2. Finding of Emergency. The City Council hereby finds the facts set forth in Section 1 constitute an emergency.

Section 3. Authority. This ordinance is enacted pursuant to the general police powers of the City of Dillingham and the City's authority to regulate use of public facilities such as streets and highways and the Dillingham Small Boat Harbor.

Section 4. Classification. This is an emergency non-code ordinance.

Section 5. Use of City Facilities Restricted for Health and Safety of All Users.

- A. No person may use any city facilities, including, but not limited to, all city port facilities governed by DMC 2.42 PORT OF DILLINGHAM, unless the person:
 - 1. Does not present with any symptoms of COVID-19; and
 - 2. Has been in the Dillingham census area lawfully for 14 consecutive days; or
 - 3. Has, within the previous 14 days, obtained a negative result on a Sars-Cov-2 antibody or antigen test.
- B. It is unlawful for a person to aid, abet, incite, compel, or coerce the doing of an act forbidden under subsection A. of this section or to attempt to do so; such act shall be deemed a violation of subsection A.
- C. An organization shall be deemed to have violated this section if the violation was committed by or with the knowledge of any person with a fiduciary relationship to the organization or other members of the organization or where such relationship would exist if there were other members of the organization and specifically includes any officer, director if a corporation, member or manager of an LLC, partner in a partnership, and any person holding 10% or more of the equity or control of the organization.
- D. Penalties and Remedies.
 - 1. Violation of subsection A. of this section constitutes criminal trespass upon city property, in violation of AS 11.46.330 and may be charged as such provided:
 - a. that notice against trespass under this section is personally communicated to a person so charged by a city official, including any city police officer; or
 - b. that notice that violation of A. of this section constitutes criminal trespass upon city property is given by posting in a reasonably conspicuous manner under the circumstances; or
 - c. for vessel owners or captains, that notice that violation of A. of this section constitutes criminal trespass upon city property is given through any method of communication or transmission customarily